

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

VINCENTE ANTONIO TORRALBA

PETITIONER

VS.

CIVIL ACTION NO. 5:11-cv-59(DCB)(RHW)

BRUCE PEARSON

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause is before the Court on the petitioner's petition challenging the calculation of his sentence, pursuant to 28 U.S.C. § 2241; the respondent's response; the Report and Recommendation of Magistrate Judge Robert H. Walker (**docket entry 17**); and the objections thereto by the petitioner. Having considered the pleadings, records on file, briefs and arguments of the parties, and the relevant legal authority, the Court is of the opinion that the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 should be denied.

In his § 2241 petition challenging the calculation of his sentence, Torralba argues that he should have received credit towards his federal sentence for time spent in state custody in California from February 27, 2004, to August 9, 2005. Respondent counters that pursuant to 18 U.S.C. § 3585(a), Torralba's federal sentence did not commence until the day it was imposed (August 9, 2005); and that pursuant to 18 U.S.C. § 3585(b), Torralba is not entitled to credit for time served before the commencement of his federal sentence where that time was fully credited against his

state sentence.

The Report and Recommendation of Magistrate Judge Walker finds that the Bureau of Prisons correctly calculated that Torralba's sentence began on August 9, 2005, the date it was imposed, and that the petitioner is not entitled to credit for a time period prior to the imposition of his federal sentence, inasmuch as he received credit toward his state sentence for the time period in dispute, February 27, 2004, to August 9, 2005. The Report and Recommendation also points out that Torralba received federal credit for time spent in state pre-sentence custody in California, i.e. from December 2, 2003, to February 26, 2004.

In his objections to the Report and Recommendation, the petitioner continues to assert that he "should be entitled to credit against his federal sentence for all of his presentence incarceration even though the time had already been credited against the state sentence from California." Objections, p. 3. His argument runs contrary to 18 U.S.C. § 3585(b), and is not well taken. The Report and Recommendation shall be adopted, and Torralba's petition pursuant to 28 U.S.C. § 2241 shall be dismissed with prejudice.

Accordingly,

IT IS HEREBY ORDERED that Magistrate Judge Robert H. Walker's Report and Recommendation (**docket entry 17**) is ADOPTED as the findings and conclusions of this Court;

FURTHER ORDERED that the petitioner's petition challenging execution of sentence pursuant 28 U.S.C. § 2241 is DENIED.

A Final Judgment dismissing the Petition in accordance with Rule 58 of the Federal Rules of Civil Procedure shall follow.

SO ORDERED, this the 26th day of November, 2012.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE